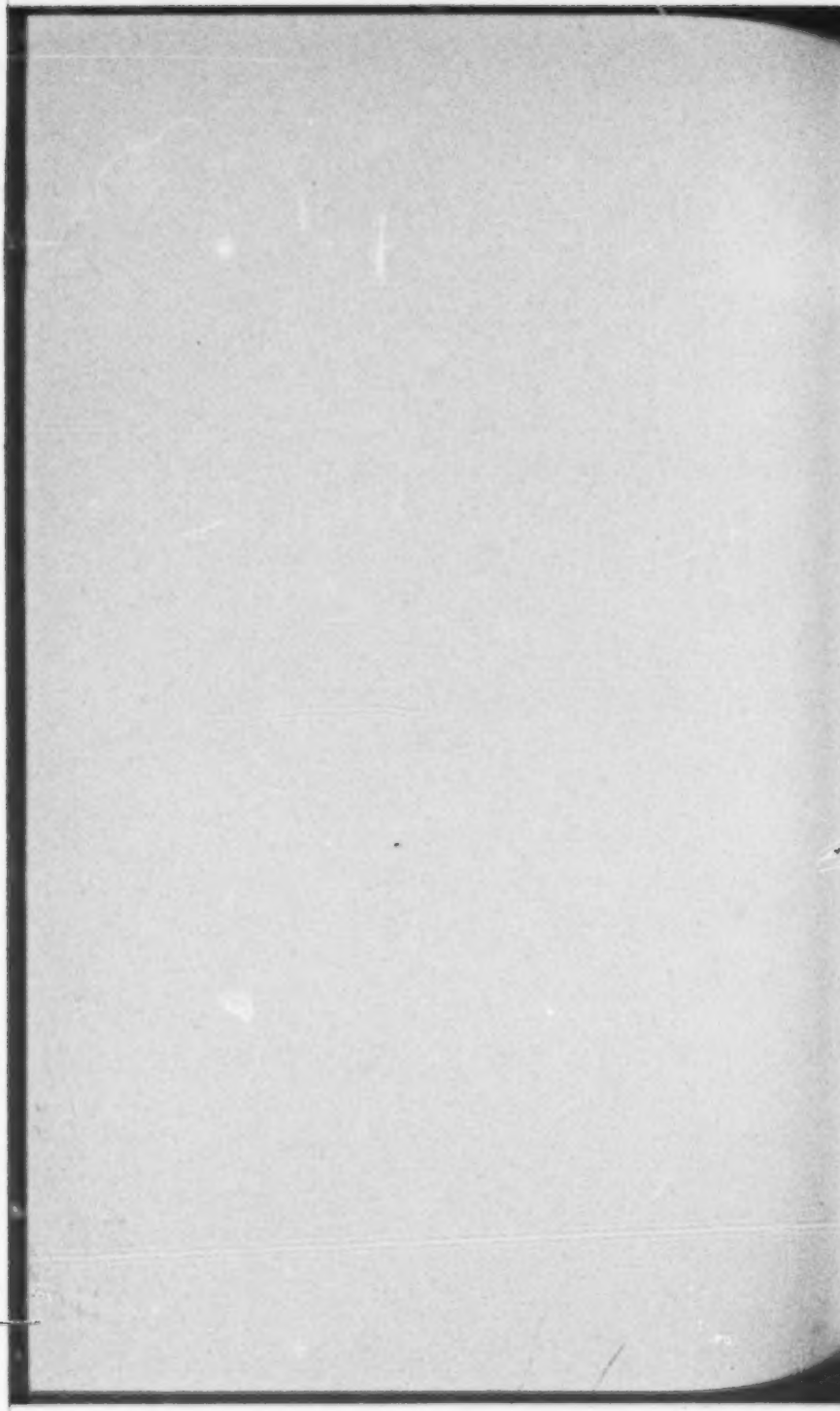

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Supreme Court of the United States

OCTOBER TERM, 1928.

No. 226

RAUL ROGERIO GONZALEZ, by his Guardian *ad litem* ADELAIDA GONZALEZ,
Petitioner,

vs.

THE ROMAN CATHOLIC ARCHBISHOP OF MANILA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR PETITIONER.

The Opinions of the Courts Below.

The opinion of the Court of First Instance of Manila is not reported. It was rendered on December 20th, 1926, and will be found in the Record at pp. 230-294. The opinions in the Philippine Supreme Court have not yet appeared in the Philippine Reports received in this country. The latest volume in the library of the New York City Bar Association comes down only to March 20, 1926. The decision was rendered on February 4, 1928, and the opinions will be found in the Record as follows:—

Opinion of the Court, by Street, J., at pp. 315-341;

Concurring opinion, by Malcolm, J., at pp. 342-353;

Dissenting opinion, by Johns, J., at pp. 353-391.

These opinions state the facts and present both sides of the case so fully and fairly that there will be little occasion for this Court to examine further into the Record. Especial attention is invited to the excellent dissenting opinion of Mr. Justice Johns (Rec. pp. 353-391).

The Jurisdiction of This Court.

(1) The date of the decision to be reviewed was February 4, 1928 (Rec. p. 315). The petition for re-hearing was denied on February 16, 1928, and judgment was entered on February 18, 1928 (Rec. p. 397). The application for certiorari was docketed on June 26th, 1928, and was therefore in due season. The petition was granted on October 15th, 1928.

(2) (a) The Court of First Instance awarded plaintiff relief by mandamus requiring his appointment to a certain hereditary Chaplaincy, and also a money judgment against defendant in the sum of 173,725 pesos (Rec., p. 293), being the equivalent of $86,862.50 at the statutory rate of exchange (see U. S. Code Annotated, Title 48, Chap. 5, §1142). The Philippine Supreme Court, by a divided Court, and with three judges not voting, reversed this judgment and directed a dismissal of the Complaint (Rec., p. 398). This is therefore a case "wherein the value in controversy exceeds $25,000" and this Court has jurisdiction

under §7 of the Act of February 13, 1925 (U. S. Code Annotated, Title 28, Chap. 9, §349), re-enacting in substance §5 of the Act of Sept. 6, 1916 (39 Stat. 727).

(b) It was also contended by plaintiff in the Courts below that to permit him to be deprived of his right to the income of the Chaplaincy by virtue of a change in the Canon Law promulgated in 1918 was contrary to the Constitution of the United States, the Treaty of 1898 with Spain, the Organic Act of the Philippine Islands, the Philippine Civil Code and other statutes (Rec. p. 392). This contention was in effect sustained by the Court of First Instance (Rec. p. 278) and denied by the Philippine Supreme Court (Rec. pp. 338-348). This Court therefore has jurisdiction of this case as one "wherein the Constitution or any Statute or Treaty of the United States is involved", under the Act of February 13, 1925, above cited.

(3) The grounds of this Court's jurisdiction to review final judgments of the Philippine Supreme Court by *certiorari* are substantially the same as by appeal or writ of error under preceding legislation.

See

§10, Act of July 1, 1902 (32 Stat. 695);
§248, Judicial Code of 1911;
§5, Act of September 6, 1916 (39 Stat. 727).

(4) The following cases, among others, sustain such jurisdiction:

De la Rama vs. *De la Rama*, 201 U. S. 303; 241 U. S. 154;
Cariño vs. *Insular Government*, 212 U. S. 449;
Villanueva vs. *Villanueva*, 239 U. S. 293;
Ingenohl vs. *Olsen*, 273 U. S. 541.

Statement of the Case.

There is no substantial issue or question of fact in the case. The facts were found with no important variation by the Court of First Instance and by both the majority and minority of the Philippine Supreme Court. They are complicated and cover a long period of time, but those essential to the controversy may be summarized with comparative brevity, substantially as follows:

On March 13, 1816, Doña Petronila de Guzman made her last Will and Testament, containing the following provisions:

> "Ninth Item. I declare and charge that the new house situated in this said town and bounded by this house of my residence toward the right of its exit, which between myself and my deceased sister Da. Vincenta de Guzman we have constructed with our own money, the expenses of which amount to one thousand six hundred pesos without including the value of the lot on which it is erected, and I charge my executor to constitute said house into a collative chaplaincy, the foundation of which they shall effect immediately after my death, electing for chaplain D. Esteban de Guzman, legitimate son of my grandson Dn. José Telesforo de Guzman, and in his default, the nearest relative, and in default of the latter, a collegian (*colegial*) of San Juan de Letran, who should be an orphan *mestizo,* native of this said town, and I request the Father chaplain to celebrate sixty masses annually, which should be said in the churches of the City of Manila or in those of its vicinities, and in privileged altars, in behalf of the souls of my father, Dn. Thomas de Guzman, and of my mother, Dña. Sebastiana de Jesus, and my broth-

ers and sisters, and for me, the testatrix after my days.

Tenth Item:—It is my will that for patron of said chaplaincy my executors name the Father President of the College of San Juan de Letran.

Eleventh Item:—I appoint my first executor as administrator of the chaplaincy which shall be founded on the house referred to, during the minority of said chaplain" (Rec., pp. 61, 62, 317).

After making this Will and prior to April 24, 1820, the testatrix died. On April 24, 1820, Don José Telesforo de Guzman, the executor named in the Will, presented a petition to the then Archbishop of Manila on behalf of himself and of his son, the designated Chaplain,

> "praying that you declare the living sufficient and order that a title to such chaplaincy issue to my son and to me, the administrator, during his minority" (Rec., pp. 49-55, 318-319).

On April 26, 1820, the executor executed a deed of the property, whereby he transferred it

> "to the spiritual properties of this Archbishopric, with the restriction that, as a spiritual property, it cannot be alienated or converted into any other estate for any cause, even though of a more pious character, (the grantor) protesting that if the contrary should be done from now until then, he declares null and without value or effect whatever may be done or executed contrary to the tenor of these presents" (Rec., pp. 318-320).

The Promotor Fiscal reported his approval of the application (Rec. pp. 55, 56, 321), and on May 12, 1820, the Archbishop approved

> "the foundation of Chaplaincy with all the circumstances and conditions provided for in said clause (of the Will) and in the Deed of Foundation"

and directed that

> "after this proceeding said executor will present himself to the Parish priest in order that the proper appointment may be issued to the proper Chaplain" (Rec. pp. 57, 58).

The first Chaplain thus appointed was, at the time, thirteen years of age (Rec. p. 35).

Since its foundation five Chaplains in all have been appointed to this benefice. As found by the Court below,

> "the first and second Chaplains were great grandsons of the Foundress, the third was a great great grandson and the fourth and fifth great great great grandsons. At the time of their appointments they were respectively more than thirteen, twenty-two, twenty-seven and nineteen years old" (Rec. pp. 35, 322).

The fifth and latest holder of the benefice, Angel Gonzalez, was the father of the petitioner. He was appointed on June 20th, 1901 and resigned on December 6th, 1910, since which date the Chaplaincy has been vacant (Rec. pp. 35, 36, 322). The instrument embodying his appointment reads:

> "We hereby give him collation, canonical institution and real possession *vel quasi* of the above mentioned chaplaincy, which shall be administered as heretofore by the administrator of the funds of this Holy Archbishopric, so that, as such chaplain he may possess and enjoy it as an Ecclesiastical benefice and by perpetual title with the obligation of ordering to

be said, by means of a priest, while he himself cannot say them, sixty masses annually according to the Will of the Foundress, and with the understanding that every year he has to show to our Court of Chaplaincies wherein this shall be recorded, that he has discharged said masses without which requisite the rent which for the purpose may be necessary shall be withheld from him. And by virtue of Holy Obedience we order those to whom these presents may concern to have and treat the said D. Angel Gonzalez y Guzman as the beneficiary and possessor of said chaplaincy, and that they pay him well and faithfully the income which in the future the capital may produce and that which it has produced while vacant, placing upon his conscience the duty of complying with the annexed conditions and relieving us thereof'' (Rec. pp. 322, 323).

At the time of the institution of the Chaplaincy the annual income of the property of the Foundation was 180 Pesos (Rec. p. 50). This has increased in present times to well over 12,000 Pesos (Rec. pp. 90, 91). The present cost of having sixty masses said per year by some one other than the Chaplain, when the Chaplaincy is vacant, or the incumbent is not a duly ordained and qualified priest, is not over 300 Pesos (Rec. p. 323), so that the present net income of the Foundation, which the Foundress so clearly intended should always be enjoyed by some one of her blood, so long as any remained, is fully 12,000 Pesos per year.

After the resignation of Angel Gonzalez as Chaplain in 1910 there was an accounting and settlement of the income of the Chaplaincy to the end of that year. This accounting included the net income of the Chaplaincy during the last preceding vacancy (Rec., p. 112), to which he was entitled

under the terms of the instrument appointing him (Rec., p. 323).

Since that time the defendant has applied the income to other purposes (Rec., p. 324) and has also caused the property to be registered in his own name and official capacity by a Torrens title free of any trust (Rec., pp. 67, 68).

The plaintiff, who is the eldest son of Angel Gonzalez, the last Chaplain, and the nearest relative in descent from the first Chaplain and from the Foundress, applied for appointment as Chaplain. By a letter of February 25, 1922 (Exh. B., Rec., pp. 58, 59), the President of the College of San Juan de Letran, the Patron of the Chaplaincy under the Will of the Foundress, presented plaintiff to the Archbishop for such appointment, certifying that he was the heir to the Chaplaincy. By letter dated March 20th, 1922, addressed to plaintiff's father, the Archbishop rejected the application upon the ground that under the Code of Canon Law promulgated in 1918 certain ecclesiastical qualifications were required for the office of Chaplain and that they were not possessed by plaintiff (Exh. C., Rec., pp. 59, 60). Prior to 1918 the only relevant requirement was one of age, which was met by plaintiff at or before the time of the trial of the cause (Rec., p. 328). As indicated in the concurring opinion of Mr. Justice Malcolm in the Court below (Rec., p. 347):

> "Broadly speaking, Raul Rogerio Gonzalez met the requirements of the Church before the Canon Law of 1918 went into effect."

By the *Codex Juris Canonici* (Canon 1442) promulgated from Rome in 1918, it was provided (Rec., pp. 346, 347):

"The Chaplaincies or simple benefices are conferred on clericals of the secular clergy."

Under the *Codex* of 1918, in order to be a "clerical", one must have the "first tonsure", and have begun the study of theology (see Canons 109, 976). He must also be a "bachiller" (Rec., p. 36). This term is defined in Alcubilla's Diccionario (Vol. 1, p. 972), as one who has received the first Academic Degree. The plaintiff does not possess these qualifications, but it was found below that plaintiff possesses "more learning and intelligence than any previous Chaplain at the time of his appointment" (Rec., p. 373).

The question is thus squarely presented whether the Canon of 1918 is effective to bar plaintiff's appointment and also to authorize the Archbishop to divert the income of the Foundation to purposes not contemplated by the Foundress. It is to be noted that from the time of the foundation of the Chaplaincy the successive incumbents were not at the time of their respective appointments qualified to say the masses provided for by the Foundress, and that it was prescribed in 1901 in respect to the last preceding incumbent that he should be under the "obligation of ordering to be said by means of a priest, while he himself cannot say them, sixty masses annually according to the will of the Foundress" (R., p. 323).

None of the previous Chaplains was a "clerigo" at the time of his appointment (R., p. 36), and it does not appear that any ever became a priest. The latest incumbent, Angel Gonzalez, "did not finish the career of priesthood in the Seminary of Manila" (Rec., p. 63). He testified that he was not "tonsured" at the time of his appointment (Rec., pp. 144, 145). It was established that the plaintiff was the nearest surviving relative of the Foundress and of the

first Chaplain, and that no other relative made any claim to the Chaplaincy (Rec., pp. 327, 328, 372).

The provision for the appointment, in default of a descendant of the Foundress, of a student of the School of "San Juan de Letran, who should be an orphan *mestizo*", shows that the Foundress did not intend or expect that the Chaplain should be in orders at the time of his appointment. As Mr. Justice Johns points out (Rec., p. 383):

> "That is nothing more than a high school, or one of secondary education, and there is no claim or pretense that any of its students is a 'clerigo' or possesses the necessary qualifications to be appointed Chaplain under the Canon law of 1918."

Thus, if the line of descendants should be extinguished and the Canon of 1918 applied, the Chaplaincy would remain forever vacant, and the secondary objects of the bounty of the Foundress would be permanently excluded from its benefits.

The Foundress and her executor manifestly contemplated the following as the objects to be attained by the establishment of the Chaplaincy:

1. That its emoluments should be enjoyed by her nearest relative, so long as there might be one surviving, and in default of such relative by an "orphan *mestizo*" student of the College of San Juan de Letran.

2. That sixty masses a year for the repose of her soul, and of the souls of certain members of her family, should be said by the Chaplain, if qualified, or otherwise by some qualified priest at the expense of the income of the Foundation.

3. That neither the property nor the income should ever be diverted to any other purpose.

The reversal by the Philippine Supreme Court of the judgment in favor of plaintiff rendered by the Court of First Instance leaves the defendant free to proceed with this diversion of the income of trust funds which has continued for the past eighteen years, unless some other and different proceedings shall be brought against him by a class which would necessarily include plaintiff, and upon the same facts which appear in the present Record. The right to bring such a class suit was expressly reserved by the Court below (Rec. pp. 340, 341).

Specification of Errors.

1. The Supreme Court of the Philippine Islands erred in finding and holding that plaintiff was not entitled to an accounting of the income of the Foundation established by Petronila de Guzman, during the vacancy of the benefice.

2. Said Court erred in finding and holding that plaintiff was not entitled to payment of the income found due upon such accounting, or any part thereof.

3. Said Court erred in finding and holding that plaintiff was not entitled to appointment as Chaplain pursuant to the Will of Petronila de Guzman.

4. Said Court erred in finding and holding that plaintiff was not entitled to any relief in this suit.

5. Said Court erred in finding and holding that relief could be granted only in a class suit in behalf of all the descendants of Petronila de Guzman, and that this suit could not be so treated.

6. Said Court erred in finding and holding that the Canon of 1918 was effective to debar plaintiff from appointment to the Chaplaincy and from receiving the income of the Foundation.

7. Said Court erred in finding and holding that plaintiff should have appealed to the Pope from the decision of the Archbishop.

8. Said Court erred in finding and holding that the ecclesiastical authorities were competent to be legislators and judges in their own cause.

9. Said Court erred in finding and holding that plaintiff's right to the income of the Foundation was not protected by the Constitution of the United States, the Treaty of 1898 with Spain and the Organic Act of the Philippine Islands.

10. Said Court erred in reversing the judgment of the Court of First Instance and dismissing the Complaint.

The foregoing errors were specified in the Petition for *Certiorari*. They are all urged, with special emphasis on Numbers 1, 4, 5, 6, 7 and 10.

ARGUMENT.

Summary.

I. The decision below defeats the testamentary intentions of Petronila de Guzman and permits the diversion of the income of the Foundation established by her executor pursuant to her Will into channels expressly excluded by the deed of Foundation.

II. The decision below permits the changes in the Canon Law made in 1918 to operate retroactively in such a way as to defeat and divest rights of property accruing to petitioner under the Will of his ancestress and permits the ecclesiastical authorities to be both legislators and judges in their own cause.

III. Appeal to the Pope was not a necessary condition precedent to recourse to the Civil Courts.

IV. If it be considered that a class suit is necessary, this action should be so treated, in order to prevent injustice and unnecessary delay and circumlocution.

POINT I.

The decision below defeats the testamentary intentions of the Foundress.

For nearly a hundred years—from 1820 to 1910—the history of this Chaplaincy discloses a continuous carrying out of the testamentary intention expressed in the Will of the Foundress, Petronila de Guzman, enphasized by the deed of Foundation made by her Executor, and reiterated in the instrument whereby the latest incumbent was installed in 1901. This intention was clear and beyond question; namely, that the nearest male relative in the line of

descent from the Foundress, if any there should be, should enjoy the revenues of the Foundation, subject only to the duty of saying a certain number of masses in each year, if qualified to do so, or causing them to be said by a qualified priest and paying the customary charge therefor out of the income.

She may have cherished the pious hope that each successive incumbent should in due course become a priest, but the history of the Foundation shows that none of them did so, thus demonstrating, by practical construction, that this was not a condition, either precedent or subsequent, to the enjoyment of the benefice.

She doubtless also desired that when an incumbent should be appointed in his youth, he should take advantage of the opportunity thus afforded to secure the education requisite to qualify him for the priesthood, and such appears to have been the intention of the plaintiff (Rec. p. 150). That the appointment, in default of any available descendant of the Foundress, of a young man, not yet a priest, was contemplated is shown by the provision for the designation in such event of an "orphan *mestizo*" student at a secondary School (Rec. pp. 61, 383).

In cases involving these ancient Chaplaincies, the Philippine Courts usually give great weight to the course actually pursued through their history.

See

City of Manila vs. *Archbishop of Manila*, 36 Phil. Rep. 815;

Capellania de Tombobong vs. *Cruz*, 9 Phil. Rep. 145.

The facts above outlined are undisputed, but the Court below has permitted the purpose of this Foundation to be

defeated and the income of the Foundation to be applied to general educational purposes, in direct contravention of the condition in the deed of Foundation against the conversion of the property "into any other estate for any cause, even though of a more pious character" and the declaration that anything done to the contrary shall be null and void (Rec. p. 320). There has been an express and undenied breach of this condition by the defendant in the registration of the property in his own name by a Torrens title (Rec., p. 323). It is true that the right to proceed independently against this registration has been reserved (Rec. p. 340), but the fact of the registration is of cardinal evidentiary importance as showing the disregard by the ecclesiastical authorities of the testamentary limitations under which the property was received and held, and thus has a direct bearing upon the right to an accounting for the income. The registration should have been in the name of the "*Capellania*" itself as a juristic person.

See

Capellania de Tombobong vs. *Antonio,* 8 Phil. Rep. 683;

Capellania de Tombobong vs. *Cruz,* 9 Phil. Rep. 145.

It is to be observed that at no stage of the cause has the lawful character of the Foundation, under the applicable local law, been questioned.

It was assumed, as obviously not subject to controversy, in *Gonzalez* vs. *Harty,* 32 Phil. Rep. 328 (1915), in which the last preceding incumbent, after resignation, sued the Archbishop for a judicial accounting and was defeated upon the sole ground that he was concluded by his own accept-

ance of a previous voluntary accounting and payment, which was not impeached upon any sufficient grounds. It is significant that upon such voluntary accounting, the net income of the Chaplaincy during the last preceding vacancy had been accounted for and paid to the new incumbent, in accordance with the terms of his appointment (Rec., p. 100). Thus the same practice was followed on this subject in the Philippines as prevails under English Ecclesiastical Law, namely, that the income of a benefice during a vacancy goes to the next incumbent (See Burn, Ecclesiastical Law, Vol. 4, p. 1, *et seq.*).

The Canon (§1481) providing for a different disposition of the income of a vacant benefice (R., pp. 40, 96) appears to be another of the innovations of 1918, and it would, moreover, be inappropriate to apply it to a *"Capellania colativa familiar"*, limited to a particular family, such as this (R., pp. 360, 361).

The inviolability of lawful testamentary intentions has been repeatedly declared and sustained by this Court. Upon this point it is deemed unnecessary to cumulate authorities, but reference may be had to

Gray vs. *Noholoa*, 214 U. S. 108;
Kenaday vs. *Sinnott*, 179 U. S. 606, 616.

That Spanish law recognized the same rule as applicable to the testamentary foundation of a Chaplaincy appears from the authorities cited on this point by the Court of First Instance (Rec. p. 277).

Under the decision below the testamentary intentions of the Foundress are completely defeated and left to remain forever frustrated unless a class suit on behalf of all of her descendants is brought as a new and independent proceeding.

POINT II.

The decision below permits the Canon of 1918 to be applied retroactively to defeat and divest property rights and allows the ecclesiastical authorities to be both legislators and judges in their own cause.

It is this point which justifies the opening sentence of Mr. Justice Malcolm's concurring opinion:

> "This is a most unusual case without a parallel in American or Spanish jurisprudence" (Rec., p. 342).

The essence of the question may be thus summarized:

> May the unquestionable powers of the duly constituted ecclesiastical authorities of a Church to regulate its spiritual affairs and ecclestiastical discipline be so applied as to divert the income of a private testamentary Foundation from the *purposes* or the *persons* contemplated by the Will and the deed of Foundation and may such authorities both legislate and adjudge in their own favor to this end?

The history of Chaplaincies, under the earlier Canon Law and under the Spanish law as applied in the Philippine Islands, offers an interesting field of research, but throws little light upon the question here presented. The essential facts as to the nature and classification of Chaplaincies are set forth in the opinions below (Rec., pp. 326, 360, 361) and are not in dispute.

The Chaplaincy here involved is a *Capellania colativa familiar,* being "instituted with the intervention of the

ecclesiastical authority" and calling "for relatives of the Founder or of the persons whom he designed as trunk, to enjoy the Chaplaincy" (Rec., pp. 360, 361).

Such Chaplaincies appear to have been a frequent form of pious Foundation, both in the Islands and in Spain, where, however, they were disamortized by a series of legislative acts, beginning in or about 1820 and continuing until 1867 (See Alcubilla, Diccionario, Vol. 2, p. 118 *et seq.*). In the Philippines they have been undisturbed by legislation, and are recognized as having juristic entity (See *supra*, p. 15, and *infra*, p. 21).

Their purpose appears to have been to provide a source of support for a succession of members of the Founder's family and at the same time to secure the saying of masses for the benefit of the family. The ecclesiastical character of the incumbent from time to time appears to have been a minor consideration.

In the absence of any decision of this or any other Court dealing with the precise question presented, it is appropriate to resort to general legal principles. The following propositions are supported by authority and are applicable to the case at bar.

1. The plenary power of ecclesiastical authority is limited to matters ecclesiastical and spiritual. When property rights are affected, the law of the land must prevail.

> *Watson* vs. *Jones*, 13 Wall. 679;
> *White Lick Society of Friends* vs. *White Lick Society of Friends*, 89 Ind. 136.

A notable instance of resort to the Civil Courts in matters affecting ecclesiastical property rights and obligations is the litigation which arose in Scotland in regard to the

properties of the Free Church and which was decided by the House of Lords under the title of *Free Church of Scotland* vs. *Overtoun*, 1904, Appeals Cases, 515.

The Free Church had withdrawn from the Established Church of Scotland, renouncing at the time all of its interest in the ecclesiastical properties of the latter. It adhered, however, to the principle of Establishment and declared itself to be the National Church of Scotland. In such capacity it accumulated a very substantial endowment from contributions and donations. Thereafter the United Presbyterian Church grew up out of a secession from the Free Church. Efforts were made by both parties to bring about a union and such union was eventually agreed upon and entered into by a unanimous vote of the United Presbyterian Church and by a vote of the majority of the governing body of the Free Church. This new body was designated the United Free Church. The representatives of the minority of the Free Church brought suit to recover the properties and endowment which had been turned over to the United Free Church.

The Scottish Courts decided against the Free Church. Upon appeal, the House of Lords reviewed at great length the entire history of the Presbyterian Church in Scotland and its successive disruptions and secessions, the position of its various organizations or branches towards the question of "Establishment" (the relation of the Church to the Civil State); and the centuries-long controversy between Calvinism and Arminianism over the doctrine of predestination; and held that, since the United Free Church left its Ministers and laymen free to hold such opinions as they choose on these questions while the Free Church by its original organization required acceptance of the principle of Establishment and of the Westminster Confession of

Faith, the remnant of the Free Church still adhering to these principles was entitled to retain the properties of the Church as against the majority which had joined with the United Presbyterian Church.

Lord Halsbury, the Lord Chancellor, treated the question as one "affecting the law of trusts and their administration" and said, at p. 626:

> "I do not suppose that anybody will dispute the right of any man or any collection of men to change their religious beliefs according to their own conscience; but when men subscribe money for a particular object and leave it behind them for the promotion of that object their successors have no right to change the object endowed."

It can make no difference in this regard whether the "object endowed" be the maintenance of the doctrine of predestination or the support of a descendant, or whether the change by the ecclesiastical authorities be in their doctrine or their discipline; in either case the fundamental law of trusts requires that the "object endowed" be not deprived of the benefit of the endowment by any such change.

2. The right of the persons entitled under the Will of the Foundress to enjoy the income of the Chaplaincy is a property right.

This was not questioned by the Court below, and the existence of some outstanding property rights was recognized by the express reservation in the Court's decision (Rec. pp. 340, 341).

When the similar Chaplaincies in Spain were disamortized by legislation, the property rights pertaining thereto were preserved for the "nearest relative of the preferred

·line", and conflicting claims were determined by the Civil Courts.

See

8 Jurisprudencia Civil, 372, May 30, 1863;
Alcubilla, Diccionario, Vol. 2, pp. 259, 261.

This disamortization, however, was not extended to the Philippines.

See

Catholic Church vs. *Municipality of Badoc*, 10 Phil. Rep. 659, 671.

3. Under the Will and the Deed of Foundation it was sufficient that the candidate should be qualified ultimately to become a priest. He was not required to be already a "clerical".

This was in effect held by both Courts below (Rec. pp. 277, 336, 347) and is further demonstrated by the whole history of the Chaplaincy.

4. The change of the Canon in 1918, however effective to regulate the performance of sacerdotal functions by a person presented for institution as Chaplain, cannot operate to deprive him, if qualified under the Will of the Foundress, of the secular and pecuniary benefits of the Foundation, without contravening the fundamental law guaranteeing property rights. In this Chaplaincy the incumbent is not required by the terms of the Foundation to perform any priestly functions in his own person (*"per se ipsum"*) but only to cause masses to be said and pay for them. To do this it is not necessary for him to have received even the "first tonsure".

It is contrary to the underlying conceptions of American jurisprudence, which now protect the sanctity of property and contract rights in the Philippines (See *Cariño* vs. *Insular Government*, 212 U. S. 449, 459; *Vilas* vs. *Manila*, 220 U. S. 345, 360), that any ecclesiastical power, however exalted, should first, as legislator, change its own laws or canons to the prejudice of outstanding property rights, and then as judge, or administrative functionary exercising discretionary power, interpret and enforce them, to the impoverishment of the individual or individuals in whom the property rights subsist and to the enrichment of its own coffers for use in other directions.

This suit is in name against the Archbishop of Manila, but he stands as the representative of the Church (See *Harty* vs. *Sandin*, 11 Phil. Rep. 451) which, in the territories acquired by the Treaty of 1898 with Spain, is a solidary juristic entity capable of holding and owning property, and therefore of incurring and performing obligations attached to such ownership.

See

Ponce vs. *Roman Catholic Church*, 210 U. S. 296;
Santos vs. *Roman Catholic Church*, 212 U. S. 463;
Barlin vs. *Ramirez*, 7 Phil. Rep. 41;
Evangelista vs. *Ver*, 8 Phil. Rep. 653.

When the Church as a juristic person thus holds property in a fiduciary capacity, as it does here, it cannot by a change in its internal law alter or eliminate its fiduciary responsibilities, and then by the mouth of its local representative determine in its own favor that its fiduciary responsibilities have been terminated.

While it is true that "that branch of the law known in England and in America as the law of trusts had no exact

counterpart in the Roman law and has none under the Spanish Law" (See *Roman Catholic Bishop of Jaro* vs. *De la Pena*, 26 Phil. Rep. 144), nevertheless the Spanish Law fully recognized the obligations growing out of a fiduciary relation and was rigid in forbidding a fiduciary "to create in himself an interest in opposition" to that of the beneficiary.

See

Severino vs. *Severino*, 44 Phil. Rep. 343, 350, 351;

Orden de Predicadores vs. *Metropolitan Water District*, 44 Phil. Rep. 292.

As appears from the opinions below in this case, there has been a strong tendency since the American occupation of the Islands to assimilate the local law on the subject of fiduciary obligations to the general law of trusts prevailing in the United States.

The Canon Law itself, both before and in the revision of 1918, recognizes the lack of power in the ecclesiastical authorities to vary the terms of a testamentary Foundation. In the monumental work of Franciscus Maria Pitonius, an "*advocatus Romanus*" with an evidently extensive practice before the Roman Rota, published in Parma in 1719, and entitled:

> "De Controversiis Patronorum, necnon ab Eis Praesentatorum ad Beneficia et Capellanias quascunque, et alia Relicta Pia" ("Concerning the controversies of Patrons as well as of those presented by them to Benefices and Chaplaincies of whatever kind and to other Pious Endowments"):

it is said, in Allegatio XXXIII, n. 37 (Tom. 1, p. 275),

> "Neque potuisset Episcopus per ejus sententiam etiam expressam institutionem praeferentem alte-

rare qualitatem dictae Capellaniae contra voluntatem Fundatricis in praejudicium eorum quibus ejus vigore competit jus";

which may be translated as follows:

"Nor can the Bishop, even by his own express decree conferring institution, alter the quality of such a chaplaincy against the will of the Foundress and to the prejudice of those to whom the right pertains by its own force."

In regard to the Chaplaincy there discussed, it was held that it was not required to be held by a priest, because the obligation to say masses was not coupled with a clause requiring the Chaplain to do so in his own person ("nisi etiam concurrat obligatio celebrandi cum clausula *per se ipsum*"). The absence of such a requirement in the Foundation under consideration here has already been noted (*supra*, p. 21).

The Revision of 1918 in like manner recognizes the sanctity of conditions and limitations attached to benefices, once they have been duly approved and accepted by the competent ecclesiastical authorities.

See Canon 1417 as follows:—

"§1. In limine fundationis fundator potest, de consensu Ordinarii, conditiones etiam iuri communi contrarias apponere, dummodo sint honestae et naturae beneficii ne repugnent.

§2. Conditiones semel admissae supprimi aut immutari ab Ordinario loci valide nequeunt, nisi agatur de mutationibus Ecclesiae favorabilibus et accedat consensus ipsius fundatoris, vel, si agatur de iure patronatus, patroni."

TRANSLATION.

"§1. In the inception of the Foundation the Founder may, with the consent of the Ordinary, impose conditions even contrary to common law provided they are honorable and not inconsistent with the nature of the benefice.

§2. Conditions once admitted cannot lawfully be abolished or changed by the Ordinary of the place unless it is a matter of changes favorable to the Church and the consent of the Founder himself is procured, or of the patron, if it is a matter of the right of patronage."

This Canon, which does not appear to have been considered by the Court below, should be regarded as limiting the effect of the other changes of 1918 and preventing their application to a Foundation already existing in such a way as to abolish or change the conditions attached to it at its inception and at that time duly accepted and admitted by the competent ecclesiastical authorities.

POINT III.

Appeal to the Pope was not a necessary condition precedent to recourse to the Civil Courts.

The highest ecclesiastical authority within the territorial jurisdiction had definitely and finally acted against the plaintiff's claim. The Holy See itself had expressly authorized in general terms the diversion of the income of such foundations to other purposes (Rec., pp. 98, 99). Whatever may be the rule as to purely ecclesiastical matters, it would be unreasonable and inequitable to require a

claimant of property rights, such as this plaintiff, to go through the formality of an appeal to the highest ecclesiastical tribunal at Rome, outside of the territorial jurisdiction, before having recourse to the local Civil Courts for the enforcement of his property rights. The Trial Court correctly held that in the circumstances of this case an appeal to the Pope under Canon 1465 "would have been a useless proceeding" and was not a condition precedent to "redress . . . through the courts of justice" (Rec., pp. 274, 275), and the contrary view of the Supreme Court (Rec., pp. 330, 347) was erroneous. The Pope had already put himself on record; he was beyond the jurisdiction of the local courts; and he too, like the Archbishop, would have been sitting in judgment in his own cause.

By analogy a similar rule should apply as in the case of confiscatory legislation or regulation by one of the American States. It is not required that *all* remedies in the State Tribunals be exhausted before applying for relief to the Federal Courts.

See

Prendergast vs. *New York Telephone Co.*, 262 U. S. 43, 48;

Banton vs. *Belt Line Ry.*, 268 U. S. 413, 417.

Here plaintiff had exhausted his remedies within the jurisdiction and that should have been regarded as sufficient, without imposing upon him "the trouble and expense of appealing to the Pope at Rome" (Rec., p. 274).

POINT IV.

If a class suit be deemed necessary, this suit can and should be so treated.

It appears from the Record that there is only one person other than the plaintiff who might claim to be entitled to the benefit of the Chaplaincy under the Will of the Foundress and that he has expressly disclaimed any rights that he may have (Rec., pp. 372, 265, 136). The plaintiff therefore embodies in his own person the "class" entitled to relief and he is also the nearest in relationship (Rec., pp. 265, 327, 328). To guard against any possible unjust result, leave might be granted, upon a reversal and remand, to all other descendants of the Foundress to come in as co-plaintiffs, upon equitable terms, and assert their claims, if any, to share in the benefit of the judgment and their right to join in preventing the diversion of the income of the Foundation. This would be in accord with the spirit of the prevailing opinion (Rec., p. 340).

The litigation has been pending for four years, all of the controversial facts have been determined, an accounting has been had, the amount of the accumulated income from the Foundation which has *not* been applied in accordance with the Will has been adjudged, and the correctness of the figures, which were furnished by the defendant, is unchallenged. Whether the plaintiff is solely entitled or whether some or all of the other descendants of the Foundress should have an opportunity to come in and assert any claims that they may have, this result of the litigation should be preserved, and the defendant should no longer be permitted to retain funds to which in any event he is not entitled, officially or individually, or to continue to

apply them to other uses, even if "more pious", as he is apparently doing in many other cases as well as in this (Rec., pp. 112, 131). The Court below recognized this in principle (Rec., pp. 340, 398), but its judgment places upon the "class" the burden of doing all over again that which has already been done, whether for them collectively or for himself individually, by the plaintiff.

It will not injure the defendant to spare him the expense of a repetition of the litigation under a different title and it will obviously benefit the plaintiff and any others who may be interested with him to avoid such delay and circumlocution.

There is good American precedent for permitting a suit originally brought by one party, solely on his own behalf, to be converted by order of Court into a class suit for the benefit of all similarly situated, and affording them all an opportunity to come in and assert their claims.

See

Williams' Admr. vs. *Newman,* 93 Va. 719, 724;
Neeley vs. *Jones,* 16 W. Va. 625, 648.

This Court has always regarded class suits as properly subject to great elasticity of treatment.

See

Smith vs. *Swormstedt,* 16 How. 288;
Stewart vs. *Dunham,* 115 U. S. 61;
Supreme Tribe of Ben Hur vs. *Cauble,* 255 U. S. 356.

The provisions of the Philippine Code of Civil Procedure are broad enough to permit whatever amendments may be necessary or appropriate to bring about the result contemplated.

The general subject is regulated by §§ 109, 110, as follows:

> "§109. An immaterial variance between the allegation in a pleading and the proof shall be disregarded and the facts found according to the evidence, and the pleading shall be forthwith amended in accordance with the facts found, unless it has actually misled the adverse party to his prejudice in maintaining his action or defense upon the merits. Whenever it appears that a variance is material and that a party has been misled, the Court shall not dismiss the action by reason of the variance, but shall, upon such terms as may be just, order the pleadings to be forthwith amended in accordance with the facts, and determine the action upon the actual facts as established. The amendments provided in this section may be made either in the Court of First Instance or in the Supreme Court, at any stage of the action.
>
> §110. The Court shall, in furtherance of justice and on such terms, if any, as may be proper, allow a party to amend any pleading or proceeding and at any stage of the action in either the Court of First Instance or Surpeme Court, by adding or striking out the name of any party either plaintiff or defendant, or by correcting a mistake in the name of a party, or a mistaken or inadequate allegation or description in any other respect, so that the actual merits of the controversy may speedily be determined, without regard to technicalities, and in the most expeditious and inexpensive manner."

Under the foregoing Sections amendments may be allowed by the Supreme Court on appeal from the Court of First Instance.

See

De la Rosa vs. *Arenas*, 7 Phil. Rep. 556;

Bismorte vs. *Aldecoa & Co.*, 17 Phil. Rep. 480;
Harty vs. *Macabuhay*, 39 Phil. Rep. 495.

The joinder of new parties on either side of the case is also permitted.

> "§121. A person may at any period of a trial, upon motion be permitted by the Court to intervene in an action or proceeding, if he has legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both. Such intervening party may be permitted to join the plaintiff in claiming what is sought by the claimant, or to unite with the defendant in resisting the claims of the plaintiff, or to demand anything adverse to both the plaintiff and defendant."

Such joinder may be required by the Court of its own motion:

> "§122. The Court may determine any controversy between parties before it if it can be done without prejudice to the right of others or by preserving their rights for future action; but when a complete determination of the controversy can not be had without the presence of other parties, the Court must order them to be brought in, and to that end may order amended or supplemental pleadings, or a cross complaint, to be filed and summons therein to be duly issued and served."

Since in this case there was an answer and trial on the merits the Court may award any relief which may be appropriate, consistent with the Complaint and within the issues.

> "§126. The relief granted to the plaintiff, if there be no answer, can not exceed that which he shall have demanded in his complaint, but, in any other case,

the Court may grant him any relief consistent with the case made by the complaint and embraced within the issue, requiring the necessary amendments."

On behalf of the plaintiff, it is submitted that he is entitled to the relief awarded to him by the Trial Court, namely, to be instituted as Chaplain, but without sacerdotal functions until he is qualified to perform them, and to be paid the accumulated income. Provision should also be made for the income accrued since the date of the account and to accrue in future.

If this Court considers that *mandamus* should not issue to require plaintiff's induction as Chaplain, but that he is entitled to the income of the Foundation, this relief might be afforded by affirming only so much of the decision of the Court of First Instance as awards a money judgment.

If this Court is of opinion that the plaintiff is not, or may not be, the only descendant of the Foundress entitled to relief, then upon a remand the Court below should be directed to treat this a class suit on behalf of all who may claim and prove an interest, as indicated in the dissenting opinion of Mr. Justice Johns (Rec., p. 390), and require or permit such amendments as may be appropriate to this end.

Conclusion.

The judgment of the Supreme Court of the Philippine Islands should be reversed and the cause remanded with instructions

(a) to affirm the judgment of the Court of First Instance in whole or in part, or

(b) to treat this as a class suit and take such further proceedings to this end as may be appropriate.

Respectfully submitted this 17th day of December, 1928.

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